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UNITED STATES GOVERNMENT

# Memorandum

ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

TO : Director, Enforcement Division 4th Flr      DATE: Oct 25, 1974  
THRU: Stan Leibowitz

FROM : Cassandra Dunn, Regional Counsel

SUBJECT: Hawaii NPDES Permit Program Approval

Comments on proposed action memo re: Hawaii NPDES approval:

In the fourth paragraph of the "Discussion" section of your memo you state:

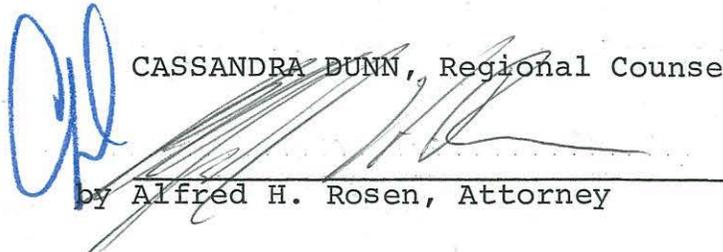
"The authority of the State to carry out the NPDES program has been reviewed by the Regional Counsel whose opinion is attached (Tab D). While the State's authority is sufficient to carry out the mandatory provisions of the Act and implementing regulations, it is noted in the Regional Counsel's opinion that in a limited number of instances the exercise of this authority by the Director is discretionary."<sup>77</sup>

We do not believe this statement to be an accurate summary of our Opinion No. 258 evaluating Hawaiian Legal Authority. Our conclusion was that Hawaiian authority was, in a few ways, not sufficient to carry out the requirements of the Act and implementing regulations. In certain instances discussed in Opinion 258, the mere fact that the exercise of authority by the Director was discretionary rendered the State's authority inadequate. Thus, it would be incorrect to infer that our opinion concluded that "The State's authority is sufficient . . . (but) in a limited number of instances the exercise of this authority by the Director is discretionary."<sup>77</sup>

Comments on proposed amendments to Chapter 37:

As proposed, these amendments would remedy one deficiency of Hawaiian legal authority cited in our Opinion 258. Specifically, the failure to meet the requirements of 40 CFR 124.41 would be corrected by amended Section 15(c)(2) which would absolutely prohibit the issuance of a permit for four categories of discharges.

CASSANDRA DUNN, Regional Counsel

  
by Alfred H. Rosen, Attorney

